

**COLORADO RIVER BOARD OF CALIFORNIA**

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November 30, 2005

Mr. Robert W. Johnson  
Regional Director  
U.S. Bureau of Reclamation  
Lower Colorado River Region  
Attn: BCOO-1000  
PO Box 61470  
Boulder City, Nevada 89006-1470

**RE: NEPA scoping for interim shortage guidelines and coordinated operation of Lakes Mead and Powell**

Dear Mr. Johnson:

The purpose of this letter is to provide the U.S. Bureau of Reclamation (Reclamation) with comments from the Colorado River Board of California (Board) regarding Reclamation's NEPA process for the development of lower basin interim shortage guidelines and coordinated management strategies for the operation of Lake Powell and Lake Mead. The Board appreciates this opportunity to provide comments on matters of such significance concerning Colorado River operations.

Although the Board's interests in this NEPA process are very broad in scope, it is our understanding that the current process of public meetings and accepting written comments is focused largely on the scoping phase of the NEPA process. Accordingly, the following comments will be confined to scoping issues with the understanding that the Board and the public generally will have additional opportunities to address other aspects of these important operational considerations. With that focus in mind the Board offers the following scoping comments:

A. Interim shortage guidelines:

1. Full Range of Reservoir Operations – The Board believes that as guidelines are developed for the operation of Lake Mead, such guidelines must be for the full range of expected operations. As such, the guidelines that are being developed to describe Lake Mead's operations under low runoff and low reservoir conditions must run concurrent with the guidelines for operation of the reservoirs for high runoff and high reservoir conditions. Thus, the shortage guidelines for the Lower Basin should be through 2016, unless through this process, the existing Interim Surplus Guidelines are extended or modified to run concurrent with the term of the interim shortage guidelines.

2. Guidelines as Opposed to Regulations -- As suggested above, the shortage rules that are being contemplated by the Secretary should be in the form of guidelines as opposed to formal federal regulations. This approach would parallel the process that was undertaken for the recently-issued Interim Surplus Guidelines, would allow for modification at the end of the interim period, and would

avoid the complexity and bureaucratic process of issuing formal federal regulations. While the Board appreciates that eventually formal long-term shortage rules may be embodied in regulations, at this stage informal guidelines are appropriate.

3. Interim Period -- The Board believes that any lower basin shortage guidelines issued by the Secretary should be effective for an interim period only (through 2016 unless the Interim Surplus Guidelines are extended or modified as described in 1. above). There are several very important reasons for this approach. First, it is appropriate for interim shortage guidelines to be structured in a temporal manner similar to the recently-issued Interim Surplus Guidelines. This will allow the states and other interested parties to deal with these two related operational structures in a similar manner and on a similar timeline. Second, Reclamation, the Basin states, and other interested parties need an opportunity to test shortage guidelines before long-term regulations are implemented on a more permanent basis. And third, since the interim shortage guidelines are linked to the possible issuance of new reservoir operation strategies, it is appropriate to explore the consequences of such operational modifications before more permanent shortage guidelines are adopted.

4. Apply to Post-1968 Entitlements -- There are groups of water entitlements within the Lower Basin's water rights structure and those groups are a function of factors such as priority dates, the structure of the 1964 Supreme Court decree, and the influence of statutes such as the 1929 Boulder Canyon Project Act and the 1968 Colorado River Basin Project Act. As a result, there are groups of entitlements: the pre-June 25, 1929 group, the June 25, 1929 to September 30, 1968 group, and the post-September 30, 1968 group. With regard to declaring shortages in the Lower Basin, the Law of the River provides different guidance in relation to these different groups of entitlements. Accordingly, since these guidelines should be in force for an interim period only, the interim shortage guidelines should cover only that group of entitlements that are post-September 30, 1968 in priority. This block of water is large enough to deal with likely shortage events during the interim period. Furthermore, extending the guidelines into the next group of entitlements, from 1929 to 1968, will raise numerous difficult issues concerning interpretation of the terms of the 1964 Supreme Court decree, the meaning of provisions in various water delivery contracts, and other complex issues that would only serve to greatly delay this NEPA process.

Also, during the process of development of the interim shortage guidelines, there must be clarification for the public of the post-1968 non-Central Arizona Project rights in Arizona and the post-1968 rights in Nevada in order to determine how the shortages will be distributed among the post-1968 entitlements. This clarification should, first, be conducted in consultation with Arizona and Nevada. When clarified, the NEPA documents should address the manner in which the water demands within the states affected by a shortage declaration will be managed. This approach would be comparable to the one used to develop Exhibit B contained in the 2003 Colorado River Water

Delivery Agreement executed by the Department of the Interior pursuant to the Interim Surplus Guidelines.

Since a hydrologic sequence of events worse than a repeat of the historic hydrologic conditions could occur during the interim period, a shortage of a larger magnitude could result. In such a situation, the Secretary may have to address the cut-back of rights in the 1929 to 1968 pool of entitlements. Thus, the interim guidelines should at least speak to that unlikely event. The Board suggests that the following reference would address this unlikely event: "Although these guidelines address only the management of shortages in the pool of entitlements that are post-September 30, 1968 in priority, if hydrologic conditions worse than historically experienced occur, the Secretary may have to address the imposition of shortages on the pool of entitlements dating from 1929 to 1968. In such a situation, the Secretary shall follow the guidelines set forth in the 1964 Supreme Court Decree in Arizona v. California and also exercise such discretion as is provided in federal law, including the decree."

5. Protection of Senior Rights – The Board believes that the interim shortage guidelines should be structured in a manner so as to give protection to senior entitlements as established in the 1968 Colorado River Basin Project Act and the 1964 Supreme Court decree. Accordingly, it is appropriate for the interim shortage guidelines to: 1) impose cut backs of water use by junior users based upon predetermined reservoir elevations so as to appropriately initiate the process of reducing junior uses in the face of what could be a long-term drought; 2) provide for additional staged reductions in the use of water by junior uses as the reservoir elevation drops; and 3) provide for the protection of storage in Lake Mead at appropriate elevations agreed to by the Lower Division states.

6. Appropriate Regard for the Intakes of the SNWA – Although not a strict water right priority matter, the Board believes that the interim shortage guidelines should reflect the *practical reality* of the elevations of the intakes for the Southern Nevada Water Authority (SNWA). Because a significant urban population is largely dependent on the water supply made feasible by the SNWA intakes, development of the interim shortage guidelines should consider protection for elevations that will allow SNWA's intakes to function.

7. Address Shortages to Mexico – An area of the law that has remained unclear is how a declared shortage will be applied to the Republic of Mexico. The Board feels strongly that the United States government must robustly protect the rights of users in the United States in accordance with the terms of the 1944 Mexican Water Treaty. The 1944 Mexican Water Treaty provides that in times of extraordinary drought Mexico will participate in cut backs that are in proportion to reductions in consumptive use imposed within the United States. Accordingly, the interim shortage guidelines should spell out for the public how this formula will be applied, how reductions in deliveries will take place, and the role of the IBWC and the State Department.

8. Voluntary Forbearance Programs – As a result of the initiation of this process, several organizations have advanced the idea that the Secretary should embrace a program to pay for the voluntary fallowing of farmland so as to push off involuntary reductions in water usage in times of declared shortages. The Board believes that the interim shortage guidelines should *not* include or formally endorse programs that place involuntary taxes or user fees on water and power users. The Board will strongly resist any attempt to tax water and power users within the Lower Division states to fund such programs. Furthermore, the Board does not see any meaningful environmental benefits resulting from such a program given that interim guideline shortage cutbacks will occur at or above Lake Havasu and a significantly large volume of water will continue to flow to Imperial Dam. Furthermore, it would be inappropriate to add this kind of program, with its complexity and lack of wide support, to the foundational structure of the interim shortage guidelines.

Although, the Board objects to the inclusion of a Secretarial-sponsored voluntary forbearance program in the interim shortage guidelines that is based on taxing water and power users. The Board does recognize the value in allowing voluntary intra-state fallowing or other arrangements deemed necessary to mitigate impacts resulting from declared shortages or to be employed in advance of anticipated shortages.

B. Coordinated Management Strategies for the Operation of Lake Mead and Lake Powell:

1. Need for Modified Reservoir Operating Guidelines – In its initiation of this NEPA process, Reclamation has provided a *linkage* between the development of interim shortage guidelines and the development of coordinated reservoir operating guidelines. Although there may be other reasons to support such a linkage, the Board believes that one fundamental reason is that it will be functionally difficult to develop meaningful interim shortage guidelines unless the Secretary and the Basin states understand: 1) the volume of water that will be released from Lake Powell under various operating conditions, 2) the volume of 602(a) storage as determined pursuant to the 1968 Colorado River Basin Project Act, and how that volume, and the storage volume determined pursuant to the Interim 602(a) Storage Guideline, will be applied, 3) the magnitude of the anticipated depletions within the Basin during the term of the proposed interim coordinated management guidelines, and 4) lake levels in both Lake Powell and Lake Mead that need special consideration. Accordingly, if the Basin states and the Secretary are to be successful in developing much-needed interim shortage guidelines, the Board believes that it is essential for the Basin states and the Secretary to likewise succeed in developing modified reservoir operating guidelines that provide benefits to both the Upper and Lower Basins.

2. Avoid calls on the Upper Basin and Avoid Shortages in the Lower Basin – As indicated in past correspondence to the Secretary, the Basin states have articulated two overriding sideboard

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factors in the development of new reservoir operating guidelines. First, any modification should help delay, in time, the likelihood of a Compact call on the Upper Division states. The Board recognizes the importance of this matter to the Upper Division states; and accordingly, the Board will work with the Basin states' representatives to find reservoir operating solutions that will postpone the likelihood of a Compact call. Second, the Board also appreciates the significant economic and other impacts from water use reductions resulting from declared shortages in the Lower Basin. Accordingly, the Board will also work with the Basin states' representatives to find solutions, in the form of modified reservoir operations that will delay the likelihood of, and reduce the magnitude of, declared shortages during the interim period. These two goals should be given emphasis by the Secretary in crafting modified reservoir operating guidelines.

C. Operational Flexibility:

1. Recognition of Programs Providing Operational Flexibility -- In the discussions of development of interim shortage guidelines and coordinated management of Lakes Powell and Mead, the Basin states are considering programs and strategies to obtain additional operational flexibility and to reduce the likelihood and impacts of low runoff and reservoir conditions. These strategies include augmentation of the water supply of the Colorado River through various means, storing conserved water in Lake Mead, salvaging water currently lost to the System, and implementation of programs that will initially provide benefits to specific beneficiaries, but in the long-term provide benefits to the System. As appropriate, the NEPA process for development of interim shortage guidelines and coordinated management of Lakes Powell and Mead should recognize these operational programs that can benefit the system and reduce the impacts of low runoff and low reservoir conditions.

Thank you for taking into consideration the comments of the Board with regard to this important process.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald R. Zimmerman", with a stylized, flowing script.

Gerald R. Zimmerman  
Executive Director